STATE OF MICHIGAN

COURT OF APPEALS

DIANE M. HECKMAN,

Plaintiff/Counter-Defendant-Appellant,

v

ARTHUR D. DYBOWSKI and VIRGINIA R. DYBOWSKI,

Defendants/Counter-Plaintiffs-Appellees.

UNPUBLISHED
April 24, 2014

No. 309408
Oakland Circuit Court
LC No. 2004-061094-CZ

Before: SAWYER, P.J., and O'CONNELL and K. F. KELLY, JJ.

PER CURIAM.

Plaintiff appeals from a judgment of the circuit court rendered in favor of defendants regarding the parties' dispute over the determination of the correct boundary line between their adjoining lots on Indian Lake in Oakland County. We affirm.

Plaintiff has owned Lot 8 since 2003; the previous owners were her parents, who had owned the lot since approximately 1950. Defendants purchased Lot 7 (along with Lot 6) in 1993; their predecessors in title had owned the lots since approximately 1960. This dispute originally arose in 2004 when plaintiff was preparing to build a house on her lot. A new survey was completed which indicated that defendant's septic tank encroached on her property. Plaintiff filed suit, seeking removal of the septic tank, as well as seeking damages for defendants having removed trees from the disputed area. Defendants counterclaimed to quiet title.

The parties filed cross motions for summary disposition. The trial court granted summary disposition in favor of defendants under MCR 2.116(C)(10) on the basis of the doctrine of acquiescence. Plaintiff appealed and this Court reversed, concluding that there was a genuine issue of material fact regarding acquiescence. *Heckman v Dybowski*, unpublished opinion per curiam (Docket No. 268643, issued 9/21/2006). This Court directed the trial court on remand to (1) determine where the recorded plat line fell, (2) how the parties and their predecessors in title treated the boundary line, (3) whether a different boundary line was established by acquiescence, and (4) whether defendants are entitled to the disputed property on the basis of adverse possession. *Slip op* at 4.

This case essentially is one of opposing surveys: the Kennedy Survey (prepared for plaintiff by Kennedy Surveying) vs. the Reichert Survey (prepared for defendants by George Reichert). On remand, the trial court found that the "overwhelming evidence" supported the Reichert Survey and the trial court adopted that as the one that properly reflected the platted boundary line. The trial court specifically found that Mr. Reichert's testimony was more persuasive and more credible than Mr. Kennedy's testimony. The trial court concluded that the Reichert Survey more accurately took into account the traverse line and the platted lot width.

While we review actions to quiet title de novo, the trial court's factual findings are review for clear error. *Jonkers v Summit Twp*, 278 Mich App 263, 265; 747 NW2d 901 (2008). Moreover, in an action to quiet title we defer to a trial court's findings and give those findings weight. *Id.* A finding is clearly erroneous only if we are left with a definite and firm conviction that a mistake has been made. *Id.* With those principles in mind, we are not left with a definite and firm conviction that the trial court erred in concluding that the Reichert Survey correctly placed the boundary line. We give deference to the trial court's conclusion that Reichert was the more credible witness. Moreover, the trial court's reasoning behind accepting the Reichert Survey with respect to how it accounted for the traverse line and the platted lot width strongly supports the trial court's conclusion. Accordingly, we affirm the trial court's determination that the Reichert Survey accurately determined the platted boundary line.

In light of this conclusion, we need not address the issues of acquiescence and adverse possession because there will have been no encroachment onto plaintiff's property. Nor do we need to address plaintiff's trespass and property damage claims for the same reason.

This only leaves the issue of the award of damages. The clerk in the lower court entered a damage award under MCR 2.625 in the amount of $170. Defendants requested a review by the trial court, arguing that they were entitled to a greater award. The trial court agreed and awarded the requested amount of $12,603.49. The trial court found that the request was specific and detailed and supported by the attachments to defendants' request and that the costs incurred were necessary. Plaintiff presents a brief argument, basing her objection on a claim that defendants presented inadequate substantiation for the costs incurred, a conclusion with which the trial court obviously disagreed. The primary focus of plaintiff's argument is that the substantiation was based upon the charges appearing on reservation forms and billing statements and were not substantiated by cancelled checks. Plaintiff however presents no authority for the proposition that costs must be substantiated by presenting the cancelled checks, nor are we aware of any such authority.

Plaintiff also specifically argues that the bill from Reichert Surveying was inaccurate because the summary conflicted with the detailed billing and therefore should have been rejected by the trial court. We disagree. First, plaintiff argues that the summary indicates that 3.75 hours of "computer time" was billed, while the detail only lists 2.75 hours. In fact, the detail lists 3.75 hours of computer time.

Next, plaintiff also argues that the summary bills for 7.75 hours of "principal time" while the detail only shows 6.75 hours of principal time. There is some truth to this argument, but not enough to convince us that the trial court clearly erred in its factual findings. First, while the detail does only show 6.75 hours, this may be due to a flaw in the printing of the first item of the

detail, billing for a meeting at the attorney's office. It clearly shows ".5 computer" being billed, on a separate line below the entry and centered. But it also includes a notation of "Hrs. Principal" as part of the initial entry and flush left to the margin. It is certainly possible that this line was to include time to be billed (perhaps an hour), in which case the 7.75 hours of principal time listed in the summary (and billed for) is accurate. Second, even if the detail does not match the summary, it would appear that the total listed in the summary is the amount that was billed and the cost that was incurred. We are not prepared to conclude that the trial court clearly erred merely because there is a flawed detail in the billing statement, particularly when there is a reasonable likelihood that it is a printing error.

Not being persuaded that the trial court clearly erred in accepting defendants' requested award of costs, we affirm that issue as well.

Affirmed. Defendants may tax costs.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Kirsten Frank Kelly